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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,770	03/30/2001	Warren F. Rogers	W0009/7004P	6962
22832	7590	12/03/2003	EXAMINER	
KIRKPATRICK & LOCKHART LLP			PRETLOW, DEMETRIUS R	
75 STATE STREET			ART UNIT	
BOSTON, MA 02109-1808			PAPER NUMBER	

2863

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/822,770

Applicant(s)

ROGERS ET AL.

Examiner

Demetrius R. Prewlow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-16 is/are allowed.
- 6) ☒ Claim(s) 16-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 16-20 and 22 are rejected under 35 U.S.C. 102(a) as being anticipated by Nicholas et al. Nicholas et al. teach a metering device measuring a quantity of fluid dispensed by the metering device (display screens) and a storage tank having a gauge (16) for measuring a height (level) of fluid in the storage tank. Note Nicholas et al. column 7, lines 15-17 and Note also column 7, lines 5-22. Nicholas et al. teach collecting a plurality of measurement data from the metering device and the gauge over a plurality of time intervals. Note Nicholas et al. column 3, lines 32-43. Nicholas et al teach transmitting the plurality of data over a network to a location remote from the fluid storage system. Note Nicholas et al. column 7, lines 30-51 and Figure 2. Nicholas et al. teach storing the plurality of measurement data at the remote location. Note Nicholas et al. column 7, lines 30-51 and Figure 2. Nicholas et al. teach determining a mathematical relationship between volume of fluid in the storage tank and the height of fluid in the storage tank. Note Nicholas et al. column 7, lines 5-22. Nicholas et al. teach performing a statistical analysis of the stored plurality of measurement data

including the mathematical relationship to obtain inventory information for fluid storage. Note Nicholas et al. column 8, lines 25-33.

In reference to claim 17, Nicholas et al. teach wherein the plurality of measurement data is transmitted automatically at predetermined intervals. Note Nicholas et al. column 3, lines 64-687 to column 4, lines 1-12.

In reference to claim 18, Nicholas et al. teach the measurement data stored at the remote location is stored in a (disk controller for archival of storage) which is equivalent to a database.

In reference to claim 19, Nicholas et al. teach transmitting results of the statistical analysis to the fluid storage system. Note Nicholas et al. column 12, lines 38-46.

In reference to claim 20, Nicholas et al. teach determining whether there is a leak in the fluid storage system. Note Nicholas et al. column 8, lines 30-33.

In reference to claim 22, a manifolded system would be inherent to the fluid storage system of Nicholas et al. Note Figure 1 and column 3, lines 28-43.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholas et al. in view of Hasselmann (US 5,316,057). Nicholas et al. teach all of the limitations above.

Nicholas et al. does not teach accurately measuring the performance of a vapor recovery system of the fluid storage system by comparing an amount of fluid recovered from vapor against an actual amount of fluid dispensed through the dispensing meters.

Hasselmann teach accurately measuring the performance of a vapor recovery system of the fluid storage system by comparing an amount of fluid recovered from vapor against an actual amount of fluid dispensed through the dispensing meters. Note Hasselmann. column 3 lines 53-55.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the invention of Nicholas et al. to include the teaching of Hasselmann because it would allow the vapor recovery system to be tested and provide and indication as to whether there is blockage in the system. Note Hasselmann column 2, lines 53-55.

#### ***Allowable Subject Matter***

3. Claims 1-15 are allowed.

#### ***Response to Arguments***

4. Applicant argues that the cited rejection does not teach the mathematical relationship between a volume of fluid and height of fluid in a storage tank.

Nicholson et al. clearly teach sensor for detecting the level of fluid in the storage

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tank and determining the volume of any fluid in a container would include the height of the fluid. Note rejection above.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

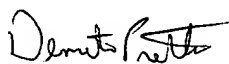
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Demetrius R. Pretlow whose telephone number is (703) 308-6722. The examiner can normally be reached on Monday - Friday from 8:00 am to 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow, can be reached at (703) 308-3126. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

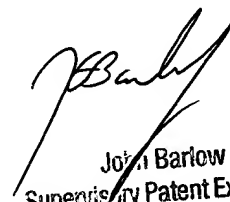
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

Demetrius R. Pretlow



12/1/07

Patent Examiner



John Barlow  
Supervisory Patent Examiner  
Technology Center 2800